

13 June 1977

MEMORANDUM FOR: Members, Meeting at OLC Conference Room,
GG-14, at 1400 hours, 13 June 1977

SUBJECT : Hatch Act

1. O/IG has been instructed by the DDCI to chair the working group considering an Agency position on the move to de-Hatch most Federal employees. Our office has not previously focused on this matter, so finds itself playing catch-up.

2. Attached is a memo that reflects our attempt to understand some of the problems presented to CIA by the approach to de-Hatching, as presented in H.R. 10. The options seem limited, and an important aspect of the matter relates to how the bill, in its present form, would in fact impact on the Agency. This has suggested some questions to which legal answers would be helpful in approaching the development of an Agency position.

3. Your comments on the attached paper, as well as the OLC papers of 20 April and 7 June would be appreciated.

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Deputy Inspector General

Attachment a/s

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SUBJECT: CIA and Amendments to the Hatch Act

1. If the Senate approves legislation similar to H.R. 10, the result would be to remove the long-standing restrictions on partisan political activities by federal employees. The Hatch Act, in limiting this activity, intended to remove federal employees from the abuses and compromising relationships that previously had characterized the unrestrained operation of our political system. It is understood that the act was viewed as constitutional, when challenged in the courts, so the present change represents a shift in perceptions and bias rather than being based on purely legal considerations.

2. There is little doubt that relatively unfettered partisan political activity by CIA employees would present problems, both in fact and in the public perception. This would be true to a greater degree than in the case of most other government agencies and departments. For instance, there would be very different considerations involved in the active support by an employee of the Veterans Administration of an election position of Senator Jackson on SALT issues than there would be if it were a CIA employee. More particularly, if the CIA employee's Agency work assignment was on SALT-related matters the activity would be subject to critical comment. The public, with the assistance of the media, might not only view the statements of the CIA employee as representing classified CIA information, but might view it as a thinly-veiled official initiative by CIA; were such a situation to occur, CIA, on the other hand, would be obliged to give extra review to the work of the employee in question to ensure objectivity and impartiality of the work of a person who, by declaration, had become partisan. Obviously, there are many permutations of the stark example hypothesized above. Any attempt to define the separate jobs to be exempted from the effect of H.R. 10 could not adequately anticipate all possible situations.

3. H.R. 10 recognizes areas of employment that may be subject to continued Hatch Act restrictions. These involve (1) law-enforcement work, (2) inspection and auditing work, (3) work in contracting for goods and services, (4) administering licenses, grants, subsidies, etc., (5) work in foreign intelligence and national security. The provision of H.R. 10 provides for public hearings for determining what positions in those categories of activity should remain under Hatch Act restrictions. This could pose special problems for the

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Agency if the Senate approves the Act without specifically exempting CIA, as had been done in earlier drafts of this legislation.

4. To the extent that the Civil Service Commission public hearing is not only obligatory but detailed, it could compromise the authority of the DCI under Section 6 of the CIA Act of 1949, quoted in its entirety below:

"In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 403(d)(3) of this title that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the Agency shall be exempted from the provisions of section 654 of Title 5, and the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency: Provided, That in furtherance of this section, the Director of the Bureau of the Budget shall make no reports to the Congress in connection with the Agency under section 947(b) of Title 5."

5. Given the foregoing considerations we find the reasons advanced in the Office of Legislative Counsel paper of 20 April 1977 persuasive as to why CIA should have an automatic exemption from being de-Hatched. Continuation of the restrictions on partisan political activity would reinforce the real and apparent objectivity of the intelligence product, as well as reducing the opportunities for critics of CIA to charge the Agency with engaging in domestic politics through its employees. This is very much in line with President Carter's statement on the subject in which he emphasized "the appearance and substance of impartiality" in determining which positions should continue to be restricted. Of course, as conceived with the original Hatch Act, it would also reinforce the ability of the Agency to avoid politicization, an essential consideration for an organization so sensitively related to the issue of foreign policy. A by-product of the Agency's exemption, if resulting from its own request, is the extent to which this would enhance the attitude of Agency employees on their unique status, by highlighting a special importance of the work of the Agency.

Recommended Agency Position on Legislation

That CIA press for continuation of Hatch Act restrictions on partisan political activities by its employees; that

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the law specifically exempt the Agency from the proposed legislation, and specifically that it be exempted from the public hearings envisioned.

Alternatives

6. The first major difficulty presented by H.R. 10 is the requirement for public hearings, which appears to conflict with the authority of the DCI under the CIA Act of 1949. If the Agency could advance its case for being granted special authority to administer the participation of its employees in partisan politics, free from the public hearings, this problem could be resolved. As is noted below, existing Agency machinery for administering this activity is already in existence. Further, Representative Fisher of Northern Virginia unsuccessfully introduced an amendment to the House bill that would have continued the application of Hatch Act restrictions to national elections, which would have removed a major area of difficulty for the Agency, as is noted below.

7. Beyond such special provisions the options appear to be narrowed to opposition to the bill (in the absence of a special provision exempting the Agency) or agreeing to it, living with the provisions of the bill, in the absence of some modification, whether passed over the Agency's objections or with its formal agreement.

CIA Operation Under the Bill

8. Before finally fixing on the Agency's posture and the tactics it should pursue, consideration should be given to how CIA could function under the proposed bill, within the requirements of security. Various aspects of the problem, and approaches to it, have been suggested. They are considered below:

a. All employees under cover should be exempt.

Subject to the opinion of the Office of General Counsel it seems reasonable that all employees under cover can be exempted on the basis of general representations to the Civil Service Commission. Special attention would have to be given to persons who are temporarily overt but whose future assignment under cover seems likely.

b. Exemption of employees responsible for producing finished intelligence. The thought behind such a proposal would be that the sensitive relationship between intelligence analysis and policy formulation is such that the analyst must be shielded from the negative influence of partisanship. This generalization

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cannot hold up on a case-by-case basis, simply because much of the subject matter covered by analysts has a tenuous relationship to policy formulation.

c. Exemption of Employees at Grade GS-15 and above. The rationale for exempting all senior employees presents difficulties when considered on a case-by-case basis. A senior employee in the DDA or the DDS&T may have no association with clandestine activities or politically sensitive information. In such cases, if there is not a blanket exemption, participation in partisan political activity might well be justifiable.

d. Reliance on security approval of outside activities. CIA has a long-established procedure for the review and approval of outside activities by its employees. Under this procedure there has been no problem in approving active participation in non-partisan political activity; CIA employees have held and do hold public office where non-partisan elections were held for those posts. As a practical matter, under the proposed bill, most requests by CIA employees for permission to engage in partisan political activity will be for local and state matters, not involving issues of foreign policy or other intelligence-related subject matters. Therefore, if the Agency did not have a blanket exemption, a substantial proportion of any publications could be approved within CIA on a case-by-case basis. Obviously, approval would have to be renewed on a regular basis with a review of all of the relevant considerations. Some of the factors to be taken into consideration are suggested below.

- (1) The security status of the employee.
- (2) The substantive responsibility of the employee.
- (3) The level of responsibility of the employee.
- (4) The type of activity for which permission is requested, e.g., working at the polls, driving voters to the polls, soliciting funds for a candidate or party, whether the activity is local, state, or national. If an employee is to engage in writing and/or giving speeches or formulating platforms, the subject matter would be reviewed in connection with the substantive responsibilities of the employee within the Agency.

In all instances, as only overt employees would be approved for partisan political activities, it should be specified that approval includes acceptance of the standard that nothing will be done to disguise or conceal CIA affiliation.

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9. Legal considerations affecting detailed revelations at public hearings, in the light of Section 6 of the CIA Act of 1949, should be considered carefully. Consideration should also be given to the possibility of presenting information at public hearings that would gain exemption for general categories of CIA employment. Consideration should also be given to the authority of the DCI to conduct security reviews for the purpose of approval of employees who wish to engage in partisan political activity if the proposed legislation is enacted.

10. Before further consideration is given to the Agency's position, it is recommended that the General Counsel review the above three questions.

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The Director
Central Intelligence Agency



Washington, D.C. 20505

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77-3071

13 JUN 1977

DD/A Registry
File *Legal*

OLC #77-1951/a

Honorable Bill Chappell
House of Representatives
Washington, D.C. 20515

Dear Mr. Chappell:

This is in regard to your inquiry concerning
Mr. James Becker on behalf of Mr. David L. Thomas
of DeLand, Florida.

Based on the additional identifying information
you provided, all appropriate and available personnel
records were carefully reviewed and we find no
information to indicate that Mr. Becker has ever
been employed by the Central Intelligence Agency.

We appreciate your personal interest and
cooperation in this matter.

Yours sincerely,
/s/ Stansfield Turner

STANSFIELD TURNER

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Congress of the United States

House of Representatives

Washington, D.C. 20515

May 11, 1977

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Admiral Stansfield Turner, Director
Central Intelligence Agency
Washington, D.C. 20505

RE: CIA - Mr. James Becker

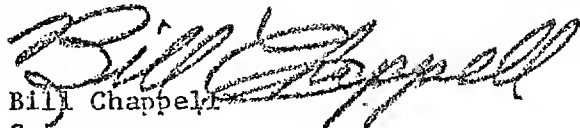
Dear Admiral Turner:

Enclosed please find further information on Mr. James Becker, received from Mr. David L. Thomas of DeLand, Florida. I contacted you on April 4 regarding Mr. Becker's possible employment with the CIA, and you kindly responded on April 23 requesting more information on him.

I would appreciate it if you would look into this matter and provide me with the requested information.

Thank you for your attention. My kind regards.

Sincerely,


Bill Chappell
Congressman

BC:mjd

Enclosure

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